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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/638,158	08/08/2003	Gary Marshall	23-0142	3581

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GARY MARSHALL  
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EXAMINER

SLACK, NAKO N

ART UNIT PAPER NUMBER

3635

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/638,158

Applicant(s)

MARSHALL, GARY

Examiner

Naoko Slack

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 11-14, 16-18 and 20 is/are rejected.
- 7) ☒ Claim(s) 7, 9, 10, 15 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/8/2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/8/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Change of Power of Attorney***

The submission of change of power of attorney was received on January 8, 2004 and has been entered.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "protective covering material on an interior face of said distal flange" (claim 14) must be shown or the feature canceled from the claim. Also, the "handle portion extending away from said closable jaws at an angle between about 35 and 50 degrees" (claim 20) must be shown. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections – 35 USC 112***

The following is a quotation of the second paragraph of 35 USC 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 is rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 recites the limitation "said distal flange" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections – 35 USC 102***

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8, 11-13 and 16 are rejected under 35 USC 102(b) as being anticipated by US Patent 298,682 to Finch.

Claim 1:

Finch discloses a siding installation guide tool comprising a clamp assembly (E), said assembly having closable jaws whereby the clamp is capable to be coupled to a first piece of siding, a guide assembly (M) having a support member, the support member having a bearing portion (P) whereby the support member is capable of supporting a second piece of siding adjacent to the first piece of siding when the clamp assembly is coupled to the first piece of siding, the guide assembly being slidably coupled (N) to the clamp assembly such that the support member is positionable at a selectable distance from the clamp assembly.

Claim 2:

Finch's clamp assembly includes a stop plate (D) coupled to one of the jaws for abutting the first piece of siding to facilitate consistent placement of the first piece of siding between the jaws.

Claim 3:

Finch's clamp assembly has a locking assembly (G and F) for locking the jaws in place.

Claim 4:

Finch's locking assembly is adjustable for setting a distance between the jaws when the clamp assembly is in a closed position (column 1, lines 40-48).

Claim 5:

Finch's locking assembly includes a screw member (G) for adjusting the distance between the jaws when the clamp assembly is in the closed position.

Claim 8:

At least one of the jaws includes a protective covering material (J) for inhibiting marring of the first piece of siding.

Claim 11:

The support member includes a distal flange (M) extending from the bearing portion whereby the guide assembly is capable of holding the second piece of siding against a structure while the bearing portion supports the second piece of siding.

Claim 12:

The distal flange has an outwardly flared edge (M) for facilitating insertion of the second piece of siding between the support member and the structure.

Claim 13:

The jaws include an upper jaw (J) and a lower jaw (C), the lower jaw having a beveled distal edge (at C) for facilitating insertion of the lower jaw between the first piece of siding and a structure.

Claim 16:

Finch discloses a method of installing siding on a structure comprising: the steps of installing a first piece of siding onto a structure; attaching a siding installation tool to the first piece of siding; adjusting a guide assembly of the siding tool to extend a desired distance from a clamp assembly of the tool; inserting a second piece of siding between the guide assembly and the structure whereby the second piece of siding is supported by the siding tool; and attaching the second piece of siding to the structure while the second piece of siding is supported by the siding tool (column 2, lines 98-102 to column 3, lines 1-6).

***Claim Rejections – 35 USC 103***

The following is a quotation of 35 USC 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 18, and 20 are rejected under 35 USC 103(a) as being unpatentable over US Patent 298,682 to Finch.

Claim 14:

While Finch discloses a protective covering material on at least one of the jaws, Finch fails to disclose a protective covering material on an interior face of a distal flange. However, since the distal edge is in contact with the tile face, it would have been obvious for one of ordinary skill in the art at the time the invention was made to put a protective covering on the distal edge that contacts the tile face to prevent marring of the tile.

Claim 18:

While Finch fails to specify that the closable jaws are 3 inches in width, the dimension of a tool is considered a matter of obvious design choice to one of ordinary skill in the art. Since there are different sizes and materials of siding to be supported by the surface area of the tool, the width would be selected to provide adequate support without damaging the siding.

Claim 20:

While Finch does not specify that the handle makes an angle of 35-50 degrees with the jaws, Finch does illustrate that the handle is angled (Figure 1).

Claim 6 is rejected under 35 USC 103(a) as being unpatentable over US Patent 298,682 to Finch in view of US Patent 4,141,452 to Martin et al.

While Finch fails to teach an annular member coupled to the clamp assembly, Martin et al. discloses an annular member (Figure 1) that coupled to a tool handle for

hanging up the tool. In view of Martin et al. it would have been obvious for one of ordinary skill in the art at the time the invention was made to use an annular member to hang up Finch's tool for storage when not in use.

Claim 17 is rejected under 35 USC 103(a) as being unpatentable over US Patent 298,682 to Finch in view of US Patent 5,692,311 to Paquin.

While Finch fails to disclose the step of providing a second siding tool, the simultaneous use of two siding tools is well known in the art, as shown by Paquin (Figure 16). In view of Paquin, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use two siding tools to facilitate the installation of siding by one worker.

***Objection to Claims, Allowable Subject Matter***

Claims 7, 9, 10, 15 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naoko Slack whose telephone number is (703) 305-0315. The examiner can normally be reached on Mon-Fri (6:00 am-2:30pm EST). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Carl D. Friedman can be reached at (703) 308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

NS  
September 26, 2004

A handwritten signature in black ink, appearing to read 'Naoko Slack', written in a cursive style.

Naoko Slack  
Primary Examiner